

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of

Rules and Policies Concerning  
Attribution of Joint Sales Agreements  
In Local Television Markets

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MB Docket No. 04-256

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To: The Secretary

Federal Communications Commission  
Office of Secretary

COMMENTS

54 Broadcasting, Inc. ("Broadcasting"), the licensee of Station KNVA(TV), Austin, Texas ("Station"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby submits its Comments in the *Notice of Proposed Rulemaking* in MB Docket No. 04-256, released August 2, 2004 ("*NPRM*").<sup>1</sup> While the proceeding has generally to do with whether the Commission will change its policies to require that parties undertaking the sales function in joint sales agreement will have their interests attributed to them for multiple ownership purposes, the Commission also asked for comments on whether it should commence a review of the continued status of grandfathered pre-November 5, 1996 local marketing agreements ("LMAs") in 2004 or, alternatively, as part of the scheduled 2006 review of ownership rules. Broadcasting addresses herein the latter point and urges the Commission to undertake its review of grandfathered pre-November 5, 1996 LMAs as part of the 2006 review process. In support thereof, Broadcasting states as follows.

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<sup>1</sup> The time for filing the instant Comments have been extended to this date. *Order*, DA 04-2996, released September 16, 2004.

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1. Broadcasting appreciates the opportunity offered by the Commission to address this subject which is of particular interest to it. While the Commission could have proceeded to undertake a 2004 review, limited only to the LMA issue, its recognition that the public is entitled to comment on what procedure is best reflects an understanding that actions involving grandfathered LMAs are best taken after consultation with all involved in order that the public interest not be detrimentally affected by the actions it takes. As we will show below, Broadcasting submits that a decision postponing the reevaluation of grandfathered LMAs until the next quadrennial review, in 2006, is in full accord with Commission policy and that neither the public nor the broadcasting community will be harmed by such a result.

2. Broadcasting is intimately familiar with the operation of a pre-November 5, 1996 LMA and relies on that experience in offering its comments in the instant proceeding. Under a pre-November 5, 1996 LMA with LIN Television Corp. ("LIN"), the Station has had its time brokered by LIN, which, in turn, is the licensee of Station KXAN-TV, Austin, Texas, an affiliate of the NBC television network in the market. Broadcasting and LIN have, over the last ten years, established a productive working relationship that has not only benefitted the parties but the Austin community as well. Broadcasting constructed the Station and, working with LIN, developed the unique program service it provides. The Station, operating as a WB affiliate, offers Austin a varied programming format aimed at the younger viewers that the WB network appeals to. In addition, the Station provides public affairs programming serving the Hispanic community, religious programming produced by a local inter-denominational group in Austin, and extensive public service campaigns.

3. In *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12964-12966 (1999), clarified in *Memorandum Opinion & Second Order on*

*Reconsideration*, 16 FCC Rcd 1067 (2001) (“*Television Broadcasting Order*”), the Commission set out the grandfathering relief for pre-November 5, 1996 LMA stations.<sup>2</sup> In particular, the Commission took note that such stations were entitled to “significant grandfathering relief” owing to the fact that these parties entered into their LMAs when there was no rule or policy prohibiting them. *Id.* This was in accord with the recognition by Congress that LMAs have made positive contributions to the public interest and were entitled to grandfathering protection.<sup>3</sup> Further, as Broadcasting can attest, the existence of an LMA has allowed stations, such as KNVA, to be constructed and, as a result of operating efficiencies, with funds saved by eliminating duplicative operations, to develop and implement new program services for the public.

4. Broadcasting submits that the bases for “significant grandfathering relief” remain as valid today as they did more than five years ago. Considering the benefits from the LMAs, and the absence of any harm, Broadcasting believes that there exists no reason to expedite the review process that the *Television Broadcasting Order* mandated.

5. While the *Television Broadcasting Order* spoke to the 2004 biennial review proceeding as the event in which the pre-November 5, 1996 LMAs would be reconsidered, that proceeding will not take place. Owing to the changes in the review processes, from biennial to quadrennial,<sup>4</sup> a modification supported by all and endorsed by the Congress, the planned 2004 review has been abolished in favor of one in 2006.

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<sup>2</sup> This was necessitated by another action taken by the Commission in which it decided to attribute to the broker in an LMA an ownership interest equivalent to being the licensee of the Station. *Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd 12559, 12597 (1999).

<sup>3</sup> 143 Cong. Rec. H. 6175 (1997); 47 U.S.C. 202(g).

<sup>4</sup> Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 3 (2004).

6. Broadcasting supports the Commission's use of the 2006 review as the regulatory event in which the Commission should consider if the pre-November 5, 1996 grandfathered LMAs should be continued and, if so, on what basis. This scheduled review is a logical event and, absent a pressing need for earlier consideration, there appears to be no need for the expenditure of the Commission's limited resources on a small group of stations.<sup>5</sup>

7. Likewise, undertaking a review at this time, with Commission multiple ownership rules in flux, raises a question as to whether the Commission can properly consider policy issues concerning the affected LMAs. It was a little over a year ago that the Commission adopted what it then believed to be a comprehensive change in the multiple ownership regime.<sup>6</sup> However, that decision was ordered remanded by direction of the United States Court of Appeals for the Third Circuit and the broadcasting community awaits the Commission's action on the remand.<sup>7</sup>

7. In Broadcasting's opinion, now is not the time for the Commission to undertake any analysis of the impact of LMAs. The Commission should first resolve its underlying multiple ownership policies in such a manner that meets both judicial and legislative scrutiny. Until then, it is premature for any element of the multiple ownership policies to be judged on its own. Considering this, Broadcasting submits that a delay of the review process until 2006 prevents the issue of grandfathered LMAs to be considered in the absence of a multiple ownership policy that withstands judicial and legislative review.

8. In the absence of any pressing need to undertake a 2004 review, and with multiple ownership policy uncertain at best and a scheduled review now required in 2006, Broadcasting

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<sup>5</sup> There appears to be no easy mechanism to know the number of currently operative pre-November 5, 1996 LMAs.

<sup>6</sup> *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 13620 (2003).

<sup>7</sup> *Prometheus Radio Project v. FCC*, 373 F. 3d 372 (3d Cir. 2004).

submits that there is no harm, and only benefit, to delay until the 2006 review cycle the consideration of pre-November 5, 1996 LMAs for continued grandfathering purposes. In 2006, when, we hope, the rules governing multiple ownership are finally settled, the Commission will be able to consider grandfathered LMAs in an environment in which the question of how to deal with such LMAs can be considered solely on the basis of whether the public interest will be benefited or harmed by the result. Broadcasting awaits such a day, in which it intends to be an active participant, and urges the Commission to provide for such a result that will best serve the affected stations and the viewing public.

Respectfully submitted,

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